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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 123.

HARVEY S. ADAMS, RECEIVER, PENN NATIONAL BANK AND TRUST COMPANY OF READING, PENNSYLVANIA,
Petitioner,

vs.

GENEVA M. NAGLE, RALPH S. HILL, JAMES H. PENGELLY AND WILLIAM M. MAYER,
Respondents.

No. 124

HARVEY S. ADAMS, RECEIVER, READING NATIONAL BANK AND TRUST COMPANY OF READING, PENNSYLVANIA,
Petitioner,

vs.

J. EDWIN TOBIAS, RALPH S. HILL AND OSCAR P. SMITH,
Respondents.

REPLY TO BRIEF OF RESPONDENTS IN OPPOSITION.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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In their brief in opposition the respondents make the point that the petition for writ of certiorari should be denied because the Comptroller of the Currency did not join in the petition and because the record fails to show service of summons and severance upon him. This reply is directed solely to this question of procedure.

It is respectfully submitted that it was not necessary that the Comptroller should have joined in the petition, or that service of summons and severance should have been had upon him, for the following reasons:

1. The Comptroller of the Currency was not an Appellee Below.

The record shows (R. 26, 70) that the Comptroller of the Currency filed in the District Court motions to quash service of process upon him, and those motions were sustained and the bills of complaint were as to him dismissed, (R. 35, 75). The motions to dismiss the bills of complaint were filed in the District Court by the receivers in each case, and the Comptroller of the Currency did not join in such motions (R. 22, 67), but appeared specially for the sole purpose of challenging the jurisdiction of the Court over his person, and filed his own separate motions to quash service of process and to dismiss the bills of complaint as to him, (R. 26, 70). The opinion of the Court below (R. 93) refers to the motions to dismiss the bills of complaint as "*His motions* to dismiss the bills admit the allegations, etc.", meaning the Comptroller's, but the record shows (R. 22, 67) that the Comptroller never joined in these motions. For these reasons the Comptroller was never an appellee in the cases below and the appearance of his name in the captions did not make him such. The cases had already been dismissed as to him and that action of the District Court was not reversed.

Inasmuch as the opinion of the Court in no way discussed the sustaining of the motions to quash service of process upon the Comptroller and the resulting dismissal of the bills of complaint as to him, and inasmuch as the opinion of the Court below is directed solely to the orders dismissing the bills of complaint and denying preliminary injunctions, and reverses only that action of the District Court, (R. 94), it must be assumed that the discussion con-

tained in the opinion of the Court below was directed to the receivers as agents and representatives of the Comptroller in enforcing the stock assessment.

2. The Comptroller of the Currency was not a Necessary Party to the Petition.

Had the Comptroller been an appellee in the cases below, as we contend he was not, nevertheless he would not have been a necessary party to the petition for writ of certiorari. He was represented in the appeals by his agents, the receivers, and a decree of the Court binding the receivers would operate equally to bind the Comptroller, in so far as the administration and liquidation of the insolvent banks was concerned. *Earle* v. *Pennsylvania*, 178 U. S. 449; *Taylor* v. *Spurway*, 72 Fed. (2) 97-99.

The receiver of an insolvent national bank is an instrument or agent of the Comptroller of the Currency in all matters involving the liquidation of the insolvent bank.

Kennedy v. *Gibson*, 8 Wall. 498;
National Bank v. *Kennedy*, 17 Wall. 21;
Hulse v. *Argetsinger*, 18 Fed. (2) 944;
Lehman v. *Spurway*, 58 Fed. (2) 227, cert den. 287 U. S. 621.

Thousands of cases are instituted yearly against national bank receivers in the Courts throughout the country without joining the Comptroller as a party defendant and a decree or judgment against such receivers is given its proper recognition.

3. The Rule Pertaining to Service of Summons and Severance is not Applicable.

The rule pertaining to service of summons and severance applies in cases where a decree has been rendered against two or more defendants requiring the joint performance or the refraining from the doing of some act. The purpose

for applying the rule is to prohibit the prosecution of an appeal piecemeal. The decrees below dismissing the bills of complaint and denying the preliminary injunctions were merely decrees entered on motions to dismiss the bills of complaint and were not decrees involving joint performance or restraint. The opinion and judgments below do not have the effect of sustaining a decree of the trial Court enjoining the Comptroller and receiver from proceeding with the enforcement of the assessment. The effect of the judgments of the Court below is merely to require the receiver to answer.

The rules as to summons and severance discussed in the case of *Boynton* v. *Hutchinson Gas Company*, 292 U. S. 601, cited in respondents' brief, and the cases of *Maytin* v. *Vela*, 216 U. S. 598, *Journeyman Stone Cutters' Association* v. *United States*, 278 U. S. 566, *Newton* v. *Consolidated Gas Company*, 264 U. S. 571, 265 U. S. 78, cited in the *Boynton* case, are not in point, since those cases involved joint decrees requiring joint performance by the parties affected.

It is respectfully submitted that it was not necessary to join the Comptroller of the Currency as a party to the petition and the rule as to service of summons and severance can not be invoked as a ground for denying the petition.

Respectfully submitted,

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